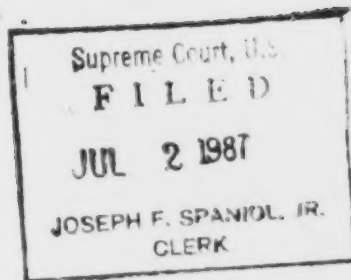


87-46

(1)



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

IN THE MATTER OF THE APPLICATION OF
EDWIN Y. FONDO, M.D.,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78
OF THE CIVIL PRACTICE LAW AND RULES,

V.

JUDGE JUDITH SHEINDLIN, INDIVIDUALLY AND
AS JUDGE OF THE FAMILY COURT OF THE STATE
OF NEW YORK, COUNTY OF BRONX AND MOLLY
MISODI,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
NEW YORK STATE COURT OF APPEALS

EDWIN Y. FONDO, M.D.
Appearing in Person (Pro Se)
Office & P.O. Address
233 East 69th Street
New York, New York, 10021
(212) 988-3000

6044

QUESTIONS PRESENTED

1. Whether Judge Judith Sheindlin of Family Court Bronx County, erred as a matter of law in violating EDWIN Y. FONDO'S constitutional right to legal counsel during a fact finding and Dispositional hearing on June 3, 1983, by denying his application for an adjournment to retain new counsel when his then counsel withdrew from the proceeding and refused to proceed.

2. Whether Judge Judith Sheindlin of Family Court, Bronx County, erred as a matter of law in failing to dismiss MOLLY MISODI'S Paternity Petition as being time-barred by Statute of Limitation, Family Court Act, Section 517(a).

3. Whether Family Court Act, Section 532(a) as amended is unconstitutional on its face.

4. Whether New York State's Court of Appeals, in denying Petitioner's Application for leave and permission to appeal the order of Supreme Court of the State of New York, Appellate Division, First Judicial Department, dated February 24, 1987, dismissing Petitioner's Appeal, to New York Court of Appeals, ignored a firm established rule that an Appellant and or Respondent are both entitled to due process, non-

violation of their respective constitutional rights
and representation by legal counsel at all stages of
action.

PARTIES TO THE PROCEEDING

The parties to this proceedings are EDWIN Y.FONDO,
M.D., a Petitioner-Appellant below, and JUDGE JUDITH
SHEINDLIN, individually and as Judge of the Family
Court of the State of New York, County of Bronx,
Respondents-Respondents below.

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

IN THE MATTER OF THE APPLICATION OF EDWIN
Y. FONDO, M.D.,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF THE
CIVIL PRACTICE LAW AND RULES,

V.

JUDGE JUDITH SHEINDLIN, INDIVIDUALLY AND AS
JUDGE OF THE FAMILY COURT OF THE STATE OF
NEW YORK, COUNTY OF BRONX AND MOLLY MISODI,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO NEW YORK STATE COURT OF APPEALS

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE
UNITED STATES, AND THE ASSOCIATE JUSTICES
OF THE UNITED STATES SUPREME COURT:

Petitioner, EDWIN Y. FONDO, M.D., respectfully

prays that a Writ of Certiorari be issued to review an Order of New York States Court of Appeals, dated and entered on June 2nd, 1987, in this Article 78 proceeding, which is included in the appendix attached hereto.

Petitioner filed a Notice of Appeal and Pre-Argument Statement in the Supreme Court of the State of New York, Appellate Division, First Department on December 7, 1985.

That Respondents' Notice of Motion to Dismiss Petitioner's Article 78 Appeal, was dated January 13, 1987, and served on Petitioner on January 22, 1987.

That Petitioner's affidavit in opposition to Respondents' said Motion to Dismiss, was sworn to January 28, 1987 and served on Respondent's counsel on January 28, 1987.

That on February 28, 1987, Supreme Court of The State of New York, Appellate Division, First Department, issued an order dismissing Petitioner's Appeal

That your Petitioner did not petitioned the Supreme Court of The State of New York, Appellate Division, First Judicial Department for reargument

and reconsideration of its order, dated June
2,1987.

OPINION BELOW

The order of New York State Court of Appeals and the Order of the Supreme Court of the State of New York, Appellate Division , First Judicial Department, which appear in the Appendix attached hereto.

JURISDICTION STATEMENT

The Court's jurisdiction is invoked pursuant to 28 U.S.C. Sections 1981, 1983, 1985(2) and (3) and 1988.

STATEMENT OF THE CASE

Procedural Background

This is an Article 78 proceeding commenced by Petitioner ,EDWIN Y. FONDO,M.D., challenging rulings made by Judge Judith Sheindlin in favor of the Respondents and against the Petitioner in a paternity proceeding instituted in Family Court of the State of New York, County of Bronx, by Respondent MOLLY MISODI and the fact that the paternity proceeding was time-barred; Petitioner alleges two constitutional claims:

(a) He was denied his right to counsel (b) Section 532(a) of the Family Court Act is unconstitutional.

That New York State Court of Appeals denied Petitioner's Application for leave and permission to appeal the order of the Supreme Court of the State of New York, Appellate Division, First Judicial Department, dated February 24, 1987, dismissing Petitioner's Appeal, to New York State Court of Appeals, in its order dated June 2, 1987.

FACTUAL BACKGROUND

That the gravamen of the position of Petitioner were set forth in the procedural background.

Petitioner is forever precluded from raising his constitutional issues and federal claims in the State Court. See Allen v. McCurry, 449 U.S. 90 and Tang v. Appellate Division, 1st Dept., 487 F.2d 138, In the case Stone v. Powell 428 U.S. 465, the Court concluded that Section 1983 was McCurry's only route to a federal forum for his constitutional claim and directed the trial Court to allow him to proceed to trial unencumbered by collateral

estoppel.

Petitioner has exhausted all of his legal remedy at law in the Courts of the State of New York and his only recourse is a review of State Court's ruling in this Court.

REASON FOR ALLOWANCE OF THE WRIT

This case presents several incidents in the Court below in which petitioner's rights were violated and he was denied due process :

.) That Respondents' Motion to Dismiss Petitioner's Article 78 Proceeding, returnable on January 30, 1987, in Appellate Division of Supreme Court, First Judicial Department (New York) , pursuant to Rules 600.5(d) (by not filing his record within thirty days of filing his Notice of Appeal), 600.11(a)(3) (by not filing and serving his brief within nine months of his Notice of Appeal), and 600.12(b) (to dismiss the petition as untimely due to lack of prosecution) of Appellate Division of Supreme Court, First Judicial Department.

That Petitioner's opposition papers to Respondents' said Motion to Dismiss, clearly pointed out that

through inadvertence, based upon Justice Callahan's said decision, dated November 22, 1985, which indicated "Settle Order", petitioner served and filed a Notice of Appeal and Pre-Argument Statement with the Clerk of the Court below.

That as a result of such inadvertence, petitioner was not permitted to perfect his appeal on such defective papers. The corrective Judgment with Notice of Settlement which had been submitted for Justice Callahan to sign, is still pending, due to Justice Callahan's resignation from the Bench.

That Justice Bertram Katz of the same Court has been assigned to handle all of Justice Callahan's cases, including Justice Callahan's decision dated November 22, 1985. That the said Judgment with Notice of Settlement has not been signed as of this date.



- b) On June 3, 1983, at a Factfinding and Dispositional hearing in Family Court, Bronx County, Judge Judith Sheindlin denied Edwin Y. Fondo's application for an adjournment to retain counsel when his then counsel withdrew from the paternity proceeding and refused to proceed.
- c) That Section 517(a) of Family Court Act specifically states in relevant part, that:

"Proceeding to establish the paternity must be instituted during pregnancy of the mother or after the birth of the child, but shall not be brought after the elapse of more than two years from the birth of the child, unless paternity has been acknowledged by the father in writing or by furnishing support."

- d) That petitioner's Article 78 proceeding raised the issues of "his denial of legal counsel", "paternity proceeding was time-barred by Statute of Limitation" and "his denial of due process" and "Section 532(a) of F.C.A. is unconstitutional"
- e) That New York State Court of Appeals' denial of petitioner's Motion for leave and permission

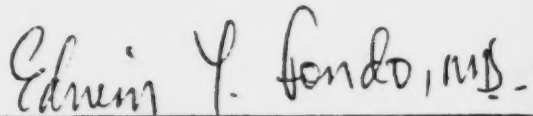
to appeal Appellate Division, First Judicial Department order, dated February 24, 1987, dismissing petitioner's Article 78 Petition, dated June 2nd, 1987, forever precluded petitioner from having his day in Court and denied him his constitutional rights and due process.

That petitioner, appearing Pro Se, is not familiar with all of the Court's procedures. However, he has made every effort to obtain a determination on the issues as they applied to him in this case. In the interest of justice, either on constitutional issues or on the merits of the Court's ruling and on due process grounds this writ should be allowed.

CONCLUSION

For the reasons stated herein, the writ of certiorari should be allowed.

Dated: June 26, 1987



EDWIN Y. FONDO, M.D.

Appearing in Person (Pro Se)

APPENDIX

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court,
held at Court of Appeals
Hall in the City of Albany
on the 2nd day of
June A.D. 1987

PRESENT, HON. SOL WACHTLER,
Chief Judge Presiding

1 -11 Mo. No. 371
In the Matter of EDWIN Y. FOMDO, M.D.

Appellant,

vs.

JUDGE JUDITH SHEINDLIN, Individually &
c., et ano.,

Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

At a term of the Appellate
Division of the Supreme Court
held in and for the First
Judicial Department in the
County of New York, on
February 24, 1987

PRESENT—HON. Theodore R. Kupferman - Justice Presiding
 John Carro
 Bentley Kasal
 Betty Weinberg Ellerin
 Richard W. Wallach Justices.

In the Matter of the Application of
EDWIN Y. FONDO, M.D.,

Petitioner-Appellant,

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules.

-against-

Judge Judith Sheindlin, individually and
as Judge of the Family Court of the State
of New York, County of Bronx and MOLLY
MISODI, Respondents-Respondents.

Respondent-Respondent Judge Judith Sheindlin having
moved this Court for an order dismissing petitioner's appeal
from an order of the Supreme Court, Bronx County, entered on
November 24, 1985,

Now, upon reading and filing the papers with
respect to said motion and due deliberation having been had
thereon.

It is ordered that the motion to dismiss said appeal
be and the same hereby is granted.

E N T E R

HAROLD J. REYNOLD
Clerk

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

-----X

In the Matter of the Application of EDWIN
Y. FONDO, M.D.,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF
THE CIVIL PRACTICE LAW AND RULES,

-against-

JUDGE JUDITH SHEINDLIN, individually and
as Judge of the Family Court of the
State of New York, County of Bronx and
MOLLY MISODI,

Respondents.

NOTICE OF
APPEAL
INDEX 8367/85

-----X

S I R S

PLEASE TAKE NOTICE that petitioner EDWIN
Y. FONDO, M.D., hereby appeals to the Supreme Court of
the State of New York, Appellate Division, First
Judicial Department, from an order of Justice Alfred
J. Callahan, dated November 22, 1985 and entered in
the Office of the Clerk of this Court
on November 25, 1985, granting Respondent's Cross-
motion to dismiss petitioner's Article 78 proceed-
ing, and from each and every part thereof.

Dated: Bronx, New York
December 6, 1985.

A-4

Yours, etc.

EDWIN Y. FONDO, M.D.
Appearing in Person
Office & P.O. Address
233 East 69th Street
New York, New York, 10021
(212) 988-3000

TO:

ROBERT ABRAMS, ESQ.
Attorney General, State of New York
Attorney for Respondent-Judith Sheindlin
Office & P.O. Address
2 World Trade Center
New York, New York, 10048-2258

MARSHALL GREEN, ESQ.
Attorney for Respondent-MOLLY MISODI
The Legal Aid Society
Office & P.O. Address
953 Southern Boulevard
Bronx, New York, 10459
(212) 991-4600



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

In the Matter of the Application fo EDWIN
Y. FONDO,M.D.,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF
THE CIVIL PRACTICE LAW AND RULES,

-against-

PRE-ARGUMENT
STATEMENT

JUDGE JUDITH SHEINDLIN, Individually and
as Judge of the Family Court of the State INDEX 8367/85
of New York, County of Bronx, and MOLLY
MISODI,

Respondents.

-----X

1. Full names of original parties and any
changes in the parties;

EDWIN Y. FONDO,M.D.,

Petitioner,

-against-

Judge Judith Sheindlin,individually and
as Judge of the Family Court of the State
of New York, County of Bronx and MOLLY
MISODI,

Respondents.

2. Name address and telephone number of counsel
for Appellant:

EDWIN Y. FONDO,M.D.
Appearing in Person
Office & P.O. Address
233 East 69th Street
New York, New York,10021
(212)988-3000

3. Names and address and telephone number of
counsel for Respondents;

ROBERT ABRAMS, ESQ.
Attorney General, State of New York
Attorney for Respondent-Judith Sheindlin
Office & P.O. Address
2 World Trade Center
New York, New York, 10007
(212)488-2258

MARSHALL GREEN, ESQ.
Attorney for Respondent-MOLLY MISODI
The Legal Aid Society
Office & P.O. Address
953 Southern Boulevard
Bronx, New York, 10459
(212)991-4600

4. Court and County from which Appeal is taken:

SUPREME COURT, BRONX COUNTY

5. State whether Appeal is from an order or a
final judgment, and the date of entry thereof;

Order of Justice Alfred J. Callahan,
dated November 22, 1985, entered on November 25, 1985
in Office of Clerk of This Court.

6. State whether there is any additional appeal
pending in the same action, the date of entry
of the Order of judgment;

NONE

7. State whether there is any related action or
proceeding now pending in any Court of this or any other
jurisdiction;

NONE

8. State the nature and object of the cause of action or special proceeding:

Article 78 proceeding instituted by petitioner for an order directing that the acts and actions of the respondents were without any color of law and were arbitrary and capricious and that the State respondent Judith Sheindlin violated his constitutional right to legal counsel when on June 3, 1983, she denied his application for an adjournment to retain new counsel when his then counsel refused to proceed and withdrew as his counsel and further that Family Court Act, Section 532(a) and (b) is unconstitutional on its face and for related injunctive relief.

9. State briefly as possible the result reached in the Court or Administrative body below:

Justice Alfred J. Callahan of this Court, by order dated November 22, 1985, entered on November 25, 1987, dismissed petitioner's Article 78 Petition by granting respondents' Cross-motion.

10. State briefly as possible the grounds for seeking reversal, annulment or modification:

Judge Alfred J. Callahan erred as a matter of law and on the facts and his order was not based upon the weight of the evidences submitted and was contrary to the statutes therein provided.

11. Have the minutes of the Court ordered:

No minutes of the hearing or motion were taken.

Dated: Bronx, New York
December 6, 1985

EDWIN Y. FONDO, M.D.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART I

-----X
IN RE: EDWIN Y. FONDO, M.D.,
Petitioner.

-against-

JUDGE JUDITH SHEINDLIN, ET ANO.,
Respondent.

-----X

CALLAHAN, J. :

In this Article 78 proceeding, petitioner seeks a judgment directing respondent, a judge of the Family Court to declare her order on June 3, 1983 which purportedly denied petitioner's right to counsel at a Factfindings and Dispoaitional hearing as a violation of petitioner's constitutional and civil rights and declaring unconstitutional Section 532 (a) and (b) of the Family Court Act as amended relating to the admissibility of HLA Test results and to grant petitioner a due process hearing to contest the alleged order of filiation issued by the Family Court Judge on June 3, 1983 which declared petitioner to be the father of individual respondent MOLLY MISODI's son and cross-motion by

respondent Judge Judith Sheindlin for an order dismissing the petition as barred by a prior pending action and on grounds of res judicata, collateral estoppel and statute of limitations and for failure to state a cause of action and motion by respondent Molly Misodi for an order dismissing the petition on various grounds, inter alia, lack of jurisdiction another action pending, and res judicata are disposed of as follows:

Petitioner challenges the order of filiation and child support issued on June 3, 1983 by respondent Judge Sheindlin in Family Court, Bronx County in the case of Misodi v. Fondo P -6404/80. The gravamen of petitioner's claim is that he lacked counsel at the June 3, 1983 hearing and the HLA blood test statute involved, Family Court Act, Section 532 was unconstitutional.

Before commencing the within Article 78 proceeding, petitioner herein appealed the

Family Court order of June 3, 1983 to the Appellate Division. The Appellate Division affirmed the Family Court order Misodi v. Fondo 99 AD 2d 689. Thereafter a motion for leave to appeal to the Court of Appeals was dismissed as untimely 63 N.Y. 2d 727. Also, a motion for leave to appeal as of right was dismissed at 63 N.Y. 2d 604. A motion for reargument and reconsideration before the Court of Appeals was denied 64 N.Y. 2d 647.

Further, petitioner herein commenced an action in the federal district court John Doe v. Molly Misodi 85 CIV0083 (PNL). In the federal court the action against Judge Sheindlin was dismissed by reason of her judicial immunity. While the federal action was sub judice, the within Article 78 proceeding was commenced. On June 27, 1985, a decision was issued by the federal court by Judge Leval. The court dismissed the complaint as to defendant Misodi. Also, the court found that Section 532 of the Family Court Act had no constitutional defect citing Merrill v. Halston 95AD 2d 177, 465 N.Y.S. 2d 507 (1983; Smith v.

Jones 120 Misc. 2d 834, 466 N.Y.S. 2d 643 (Fam. Ct. 1983); June L. v. Rodney B. 108 Misc. 2d 709, 438 N.Y.S. 2d 726 (Fam. Ct. 1981). The court however indicated that there may be merit to plaintiff's argument that the Family Court Judge acted unfairly in having to proceed to trial without his counsel. However, the contention did not reach the level of a violation of due process giving rise to an action in federal court to void the state court judgment.

In the within Article 78 proceeding, petitioner again seeks to declare Family Court Act, Section 532 (a) and (b) as amended as unconstitutional and declaring the Family Court order as unlawful and unconstitutional as a violation of his constitutional and civil rights. This argument has already been determined by appellate review and the collateral federal court action. Moreover, Family Court Act, Section 532 has been held to have no constitutional defect and the admissibility of such tests

has been upheld (See Merrill v. Ralston 95 A.D. 2d 177, 465 N.Y.S. 2d 507 (1983); Doe v. Misodi 85 CIV 0083 (PNL) Mem. Opinion Order June 27, 1985 Judge Leval, U.S.D.C. Southern District of New York.

Petitioner's claim of violation of his constitutional and civil rights on the grounds that Family Court Judge made inferences as to his failure to take the HLA test is without merit. This issue has been also previously disposed of by the appellate court and in his civil rights action in the federal court. Petitioner's contention that he as denied his constitutional right to counsel at the Fact-finding and Dispositional hearing in the Family Court, Bronx County presents a different problem. In the federal action, the court noted that there may be merit to plaintiff's contention that the Family Court Judge acted unfairly, but such a claim did not constitute a violation of due process sufficient to give rise to a federal court action to void the state court judgment. According to the federal

court plaintiff's remedy was to seek Appellate or other review in the state court.

Petitioner herein has already sought appellate review of Judge Sheindlin's determination without success. After seeking appellate review and commencing a civil rights action in the federal court, petitioner now seeks to challenge Judge Sheindlin's June 3, 1983 order by this proceeding which seeks mandamus. Clearly, this court does not review determinations of final orders of the Family Court. Petitioner had the right to appeal the Judge's order to the Appellate Division (See Family Court Act, Section 1112 (a)). Petitioner did so and the Appellate Division affirmed the Family Court order (99 AD 2d 689). Patently the issues raised before the Appellate Division were decided against Petitioner. In this Article 78 proceeding petitioner seeks review of Judge Sheindlin's denial of his right to counsel. This issue was raised in the Appellate Court which affirmed the Family Court Order including the claim of lack of counsel. Accordingly,

mandamus does not lie since Appellate review was available and adequate.

In addition, petitioner had a full opportunity to challenge the Family Court Order in the Appellate court and cannot resurrect the same issues by this Article 78 proceeding. Petitioner was collaterally estopped from raising the same issue against the same parties. (See Ryan v. New York Telephone 62 N.Y. 2d 494, 500-1 (1984). Moreover, this proceeding was brought more than four months after the issuance of the Family Court Order of June 3, 1983 (CPLR 217). It may be argued that the several appeals and motions for leave to appeal extended the prescribed statute of limitations period of four months. However, this court finds no authority for the tolling of the statute of limitation period or the extension thereof to permit judicial review of the Family Court Judge's action by this court. Thus, the proceeding is time barred by the applicable statute of limitations.

Accordingly, petitioner's application is denied and the motion and cross-motion of respondent Misodi and Judge Judith Sheindlin respectively to dismiss the proceeding are granted.

Settle Judgment.

DATED:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

-----X

In the Matter of the Application of

INDEX

EDWIN Y. FONDO, M.D.,

#8367/85

Petitioner,

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules,

JUDGMENT
WITH NOTICE
OF
SETTLEMENT

-against-

JUDGE JUDITH SHEINDLIN, individually and
as JUDGE OF THE FAMILY COURT OF THE STATE
OF NEW YORK, COUNTY OF BRONX, and MOLLY
MISODI,

Respondents.

-----X

S I R S :

PLEASE TAKE NOTICE that a Judgment of
which the within is a true copy will be presented
for settlement to the Hōnorable ALFRED J. CALLAHAN,
one of the Justices of the within named Court at
I.A.S. Part 4 thereof, Supreme Court, Bronx
County, on the 31st day of December 1986, at
9:30 A.M.

Dated: Bronx, New York

November 1st, 1986

EDWIN Y. FONDO, M.D.
Appearing in Person
Office & P.O. Address
233 East 69th Street
New York, New York, 10021
(212) 988-3000

TO: ROBERT ABRAMS, ESQ.
N.Y. State Attorney General
Attorney for Respondent SHEINDLIN
Office & P.O. Address
2 World Trade Center
New York, New York, 10947
(212) 488-2258

MARSHALL GREEN, ESQ.
The Legal Aid Society
Attorney for Respondent- MISODI
953 Southern Boulevard
Bronx, New York, 10459
(212) 991-4600

At an I.A.S. Part 4 of the
Supreme Court of the State of
New York, held in and for the
County of Bronx, at the Court
House thereof, at 851 Grand
Concourse, in Bronx, New York,
on the day of December 1986

P R E S E N T :

HON. ALFRED J. CALLAHAN

-----X

In the Matter of the Application of
EDWIN Y. FONDO',.

INDEX #
8367/85

Petitioner,

JUDGMENT
WITH NOTICE
OF
SETTLEMENT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,

-against-

JUDGE JUDITH SHEINDLIN, individually and as
JUDGE OF THE FAMILY COURT OF THE STATE OF
NEW YORK, COUNTY OF BRONX, and
MOLLY MISODI,

Respondent.

-----X

Petitioner having moved this Court for a Judgment pursuant to Article 78 of the Civil Practice Law and Rules, as follows:

a) Directing the respondent, JUDGE JUDGE JUDITH SHEINDLIN, individually and as JUDGE OF THE FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX, to declare its order, dated June 3, 1983, denying petitioner his constitutional right to counsel at a Fact-finding and Dispositional hearing in Family Court, Bronx County, a violation of petitioner's constitutional and civil rights,

b) Declaring that Section 532 (a) and (b) of the Family Court Act, as amended, March 1, 1981, relating to the admissibility of Human Leucocyte Antibody Test (H.L.A.) results, on the grounds that it is unconstitutional on its face as being; (1) an unlawful delegation of legislative power, (2) unconstitutionally vague and (3) denies putative fathers equal protection of the law, and (4) to grant petitioner a due process hearing to contest the alleged Order of Filiation issued by Family Court, Bronx County, by Judge Judith Sheindlin,

on June 3, 1983, declaring petitioner to be the natural father of individual respondent MOLLY MISODI's son.

and having read the Notice of Petition, dated March 25, 1985, and the Petition of EDWIN Y. FONDO, M.D., in support of said Notice of Petition, verified the 25th day of March, 1985, and the Exhibits annexed thereto, and having read the respondent's Notice of Motion to Dismiss, dated April 6, 1985, and the affidavit of Molly Misodi, in support of Motion to Dismiss, sworn to April 16, 1985, and the affirmation of IAN F. FELDMAN, in support of Motion to Dismiss, dated April 9th, 1985, and affidavit of EDWIN Y. FONDO, M.D., in opposition to respondent's Motion to Dismiss, sworn to April 22, 1985, and this Article 78 proceeding having come on to be heard and appeared on the Motion Calendar of this Court on April 23, 1985, and after due deliberation having been had, it is

NOW on motion of EDWIN Y. FONDO, M.D., Appearing in Person (Pro Se), and upon the decision of this Court, dated November 22nd, 1985, it is

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ORDERED, ADJUDGED AND DECREED that petitioner's Notice of Petition for a Judgment declaring the acts and actions of respondent, JUDGE JUDITH SHEINDLIN, dated June 3, 1983, violated the constitutional and civil rights of petitioner, is denied., and it is

ORDERED, ADJUDGED AND DECREED, that respondent's Motion to Dismiss petitioner's Petition in this action, is granted.

Judgment signed this day of
December 1986, at Bronx, New York.

E N T E R

JUSTICE OF THE SUPREME COURT OF
THE STATE OF NEW YORK,
COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

-----x

In the Matter of the Application of
EDWIN Y. FONDO, M.D.,

Petitioner,

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

NOTICE OF
PETITION

JUDGE JUDITH SHEINDLIN, individually
and as JUDGE OF THE FAMILY COURT OF
THE STATE OF NEW YORK, COUNTY OF BRONX, INDEX #
and MOLLY MISODI,

Respondents.

-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed
Petition of EDWIN Y. FONDO, sworn to the 25th
day of March, 1985, and upon all of the Exhibits
annexed hereto, and upon all of the pleadings and
proceedings heretofore had herein, the under-
signed will move this Court at a Special Term,
Part I thereof, to be held at the Courthouse
thereof, located as 851 Grand Concourse, in the
Borough of Bronx, City and State of New York,
on the 16th day of April 1985, at 9:30 A.M.

in the forenoon of that day or as soon thereafter as counsel can be heard, for an order, pursuant to CPLR Article 78, directing the respondent State JUDGE JUDITH SHEINDLIN, individually and as JUDGE OF THE FAMILY COURT OF THE STATE OF NEW YORK, to declare its order on June 3, 1983, denying petitioner his constitutional right to counsel at a Factfinding and Dispositional hearing in Family Court, Bronx County, a violation of petitioner's constitutional and civil rights and declaring that Section 532 (a) and (b) of the Family Court Act, as amended March 1, 1981, relating to the admissibility of HLA Test results, on the grounds that it is unconstitutional on its face as being:

- a) an unlawful delegation of legislative power,
- b) unconstitutionally vague and c) denies putative father the equal protection of the law,

and to declare such unconstitutional, vacated and void and to grant petitioner a due process hearing to contest the alleged Order of filiation issued by the Family Court, Bronx County, by Judge Judith Sheindlin, on June 3, 1983, declaring him to be the father of individual

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respondent MOLLY MISODI's son, and for such other and further relief as to this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that you are required to serve upon petitioner and/or his attorney and to file with the Clerk of this Court at least three days prior to the return day of this application, your verified answer, and such affidavits and other proof as you care to submit in this matter.

Dated: New York, New York
March 25, 1985

Yours, etc.

EDWIN Y. FONDO, M.D.,
Appearing in Person
Office & P.O. Address
233 East 69th Street
New York, New York, 10016
(212) 988-3000

TO:

JUDGE JUDITH SHEINDLIN,
INDIVIDUALLY AND AS JUDGE
OF FAMILY COURT OF THE STATE OF
NEW YORK, COUNTY OF BRONX
900 Sheridan Avenue
Bronx, New York

TO:

MOLLY MISODI
Individual Respondent
Office & P.O. Address
51 Buchanan Place
Bronx, New York

ROBERT ABRAMS, ESQ.
Attorney General, State of New York
Attorney for JUDGE JUDITH SHEINDLIN
2 World Trade Center
New York, New York, 10007

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

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In the Matter of the Application of
EDWIN Y. FONDO, M.D.,

Petitioner,

-against-

VERIFIED
PETITION

JUDGE JUDITH SHEINDLIN, individually
and as JUDGE OF THE FAMILY COURT OF THE
STATE OF NEW YORK, COUNTY OF BRONX and
MOLLY MISODI,

Respondents.

-----x

EDWIN Y. FONDO, M.D., the petitioner
herein, appearing in person, respectfully shows
to this Court and alleges as follows:

1. Petitioner at all the times hereinafter
mentioned, was and still is a citizen of the
State of New York, presently residing at 233
East 69th Street, New York, New York.

2. Respondent, JUDGE JUDITH SHEINDLIN, is
presently a Judge of the Family Court of the
State of New York, County of Bronx, and as such,
she is responsible under the Laws of the State
of New York, to interpret, construe and to abide
by the law as mandated by statute and to declare
such unconstitutional when such is warranted.

3. Respondent, JUDGE JUDITH SHEINDLIN, as a Judge of the Family Court, Bronx County, maintains a Court room and Chambers at 900 Sheridan Avenue, Bronx, New York.

4. Respondent, MOLLY MISODI, was and still is a Citizen of the State of New York and resides at 51 Buchanan Place, Bronx, New York, and was and still is the natural mother of EDWIN YOUNG MISODI, a minor, and the subject of the Paternity proceedings, pending in Family Court, Bronx, County, under Docket #p-6404/80.

5. On June 3, 1983, at a Factfinding and Dispositional hearing in Family Court, Bronx County, the petitioner appeared before Judge Judith Sheindlin. Petitioner's then attorney FREDERICK C. HAYES, ESQ., having made an application for an adjournment in order to obtain certain transcripts, which application was denied, failed and refused to proceed to trial on the grounds that he was not prepared to do so. Following the contumacious colloquy between petitioner's attorney and the Trial Court, said attorney was advised that the trial would proceed

with or without him. The trial court asked petitioner if he wished his attorney to continue to represent him and petitioner responded affirmatively. The trial court advised petitioner to consult with his attorney with a view towards persuading said attorney to proceed with the trial. Failing to persuade his attorney to proceed, petitioner made an application for an adjournment to retain other counsel, or alternatively, for the Trial Court to appoint counsel for him. The Trial Court denied petitioner's application and inquired whether petitioner desired to proceed Pro Se. to which petitioner responded negatively and informed the Trial Court that he would require the assistance of counsel. At this time, the Trial Court asked petitioner if he intended to stay. The Trial Court proceeded to hold an Inquest. At said Inquest, petitioner was asked perfunctory questions relating to the allegations set forth in paternity petition and upon the conclusion of said questioning, the Trial Court entered an Order of Filiation naming petitioner the father of

respondent MOLLY MISODI's child and entered an Order of Support.

6. Petitioner respectfully contends that the respondent JUDGE JUDITH SHEINDLIN, individually and as JUDGE OF THE FAMILY COURT, BRONX COUNTY, and as presiding Judge of the Trial Court on June 3, 1983, violated his constitutional right to counsel by refusing him the opportunity to retain an attorney to represent him in that proceeding, and denied him an opportunity of having his case adjudicated on the merits. It is a well recognized principle of law that a party may discharge his attorney at any time, with or without cause DEMOV, Morris, Levin & Shein v. Glantz, 78 A.D. 2d 883.433 N.Y.S. 2d 46, affirmed 53 N.Y. 2d 553, 444 N.Y.S. 2d 55 (1981); Paulsen v. Halpin, 74 A.D. 2d 990, 427 N.Y.S. 2d 333; Costello v. Bruskin, 58 A.D. 2d 573, 395 N.Y.S. 2d 116.

In Costello v. Bruskin, (supra) the Court found that as between attorney and client, no specific formality is required to effect a discharge of the attorney, and any act of the client indicating unmistakable purpose to sever relations



is enough. Petitioner further contends that his attorney's refusal to represent him at the trial, and his request for new counsel constituted unmistakable purpose to sever the attorney-client relationship between petitioner and his then attorney. That as of that moment, for all intents and purposes, he was without counsel and without adequate means to defend his rights and interests or contest the allegations of the paternity petition. In view of facts, the Trial Court's assumption, if any, that counsel's refusal to proceed with the trial was dilatory tactic or trial strategy chargeable to petitioner was totally unfounded. Such an assumption may have been valid, or at least could have been reasonably inferred, had petitioner merely acquiesced in counsel's action. However, the assumption became invalid, and could not have been reasonably inferred, when petitioner discharged his attorney, asked for an adjournment to retain new counsel, or alternatively, for the Trial Court to appoint him counsel. The Trial Court's denial of his application for an adjournment to retain new counsel effectively impaired

his ability to defend his rights, and interests, denied his constitutional right to counsel and denied him his right to an evidentiary hearing on the allegations of the paternity petition.

In the Matter of Linda "RR" v. Brent "SS". 40 A.D. 2d 908, 337 N.Y. S. 2d 940 (3rd Dept. 1972), the respondent denied paternity and placed in issue all the allegations set forth in the petition. On the return date of the summons, respondent sought an adjournment until such time as his retained counsel could be present and blood grouping tests taken. The Court denied his request and without taking any evidence, entered an order of filiation based solely on the admission of paternity not found in the record. The facts in Matter of Linda "RR", approximates those in the instant case, in that the Trial Court denied petitioner's application for an adjournment to retain counsel and entered an Order of Filiation on the "admission" not found in the record, to wit; that petitioner acknowledged paternity by furnishing of support for the child. In Matter of Linda "RR", Appellate Division, Third Department, reversed the



lower court's order on the law and facts and held:

"Respondent was entitled to an evidentiary hearing on the allegations of the petition (Family Court Act, Section 531) He was also entitled to a fair opportunity to protect his interest Pro Se or with aid of counsel (see Matter of Valarie H. v. Koene D.B., 38 A.D. 2d 728, 330 N.Y.S. 2d 473; Matter of Whitener v. Whitener, 37 A.D. 2d 979, 327 N.Y.S. 2d 415; Smith v. Hayes, 36 A.D. 2d 570, 317 N.Y.S. 2d 777)

... The petitioner was denied fundamental rights to defend the charges and is entitled to a new hearing" (Emphasis added).

The right to counsel in an adversary proceeding where, as here, substantial rights and interests of the parties will be affected, it is incumbent upon the Courts to provide counsel to any party unable to secure his or her own counsel.

7. Family Court Act, Section 532 (a) and (b) as amended March 1, 1981, is unconstitutional on its face because it constitutes an unlawful delegation of legislative power. The amended portion of Section 532 (a) reads as follows:

"However, the results of the human leucocyte antigen tissue test may be received in evidence to aid in the determination of whether the alleged father is or is not the father except in cases where exclusion has already been established by other blood grouping tests".

8. Petitioner contends that the amended portion of Section 517 (a) represents a sweeping change in the entire purpose of blood grouping tests and radically changes the evidentiary usage of such tests. Whereas heretofore, such tests were admissible only as exclusionary evidence, under the amended portion of Section 532 (A), it is made inclusory evidence. In cases where the results of an HLA Test were used in "assisting" courts in determination of paternity, the results have taken on the raiments of prima facie evidence of paternity.. Such a broad and sweeping change in evidentiary usage, without any guidelines as to how it should be implemented, and without the slightest indication of what the legislative intent is, in effect, authorizes the courts to set their own criteria as to how the results of an HLA Test will be construed, how much weight will be given them and how such results will be applied to other evidence adduced at trial. It lacks the requisite guidelines and safeguards, fails to establish adequate criteria for its use and application, fails to establish definitive legislative intent as to what the legislature

intends this amendment to do or how it should affect existing legislation relating to blood grouping test. Such bold and innovative change in evidentiary use of an HLA Test results, at the least, should clearly set forth some guidelines for its implementation and to assure uniform application to all persons coming within its purview. Under the provisions of Section 532 (a) as presently constituted, the Courts have discretion in ordering an HLA test. Section 532 (a) provides no safeguards of constitutional rights, that present legislation permit, nor require, a court to fill in the legislative blanks, that the lack of said safeguards and guidelines leaves Sections 532 (a) vulnerable to arbitrary and capricious application. The lack of such adequate safeguards of constitutional rights jeopardizes a party's right to equal protection of the law. Therefore, Section 532 (a), and its carte blanche approach, is constitutionally defective. The HLA Test like other statistical evidence, is predicated upon mathematical probabilities which can be very misleading. This is merely to say that

the HLA Test, as sophisticated and complex as it is, still susceptible to the weaknesses and biases of the human factor compiling and interpreting the data.

9. Annexed hereto and made a part hereof, are:
A) Paternity Petition (Exhibit "A"): b) Minutes of June 3, 1983 of Factfinding and Dispositional Hearing (Exhibit "B"): c) Order of Filiation and Order of Support, dated June 3, 1983, signed by Judge Sheindlin (Exhibit "C").

10. That the acts of the respondents were arbitrary, capricious and designed to destroy petitioner's reputation as a medical doctor and to saddle him with the stigma of being known as the natural father of respondent MOLLY MISODI's son and to subject petitioner to substantial financial loss, mental anguish and immedicate and irreparable damages.

WHEREFORE, petitioner prays that an order be granted by this court, pursuant to Article 78, directing that the acts and actions of the respondents were without any color of law and was arbitrary and capricious and that the State

respondent JUDGE JUDITH SHEINDLIN violated his constitutional right to legal counsel when on June 3, 1983, she denied his application for an adjournment to retain new counsel when his then counsel refused to proceed and withdrew as his counsel and further that Family Court Act, Section 532 (a) and (b) is unconstitutional on its face and for such other and further relief as to this court deems just and proper.

EDWIN Y. FONDO, M.D.,

Dated: New York, New York
March 25, 1985

VERIFICATION

State of New York)
County of New York) SS:

EDWIN Y. FONDO, M.D., being duly sworn deposes and says:

I am the petitioner in the within named petition and have read the foregoing petition and know the contents thereof, that the same is true to deponent's own knowledge except as to those matters therein alleged upon information and belief and as to those matters deponent believes it to be true.

EDWIN Y. FONDO, M.D.

Sworn to before me this 25th
day of March 1985

NOTARY PUBLIC, STATE OF NEW YORK

At a Term of the Family Court
of the State of New York, City
of New York, held in and for
the County of Bronx, at 900
Sheridan Avenue, New York, on
June 3, 1983.

PRESENT:

HON. JUDITH SHEINDLIN

J.F.C.

In the Matter of the Paternity
Petition of

ORDER OF FILIATION

MOLLY MISODI,

Docket #P-6404/80

Petitioner,

- against-

EDWIN FONDO,

Respondent.

The above-named petitioner having filed a
petition, sworn to September 20, 1980, alleges
that the above-named respondent is the father
of a male child, Edwin Young Misodi, born out
of wedlock to Molly Misodi on August 31, 1978,
and that said mother and/or child is or is
likely to become a public charge; and

Said respondent having appeared before this
Court to show cause why a declaration of pater-
nity, order of support and other relief prayed

for by the petition should not be made and the said respondent having denied the allegation of the petitioner; and

The issues having duly come onto be heard before this Court:

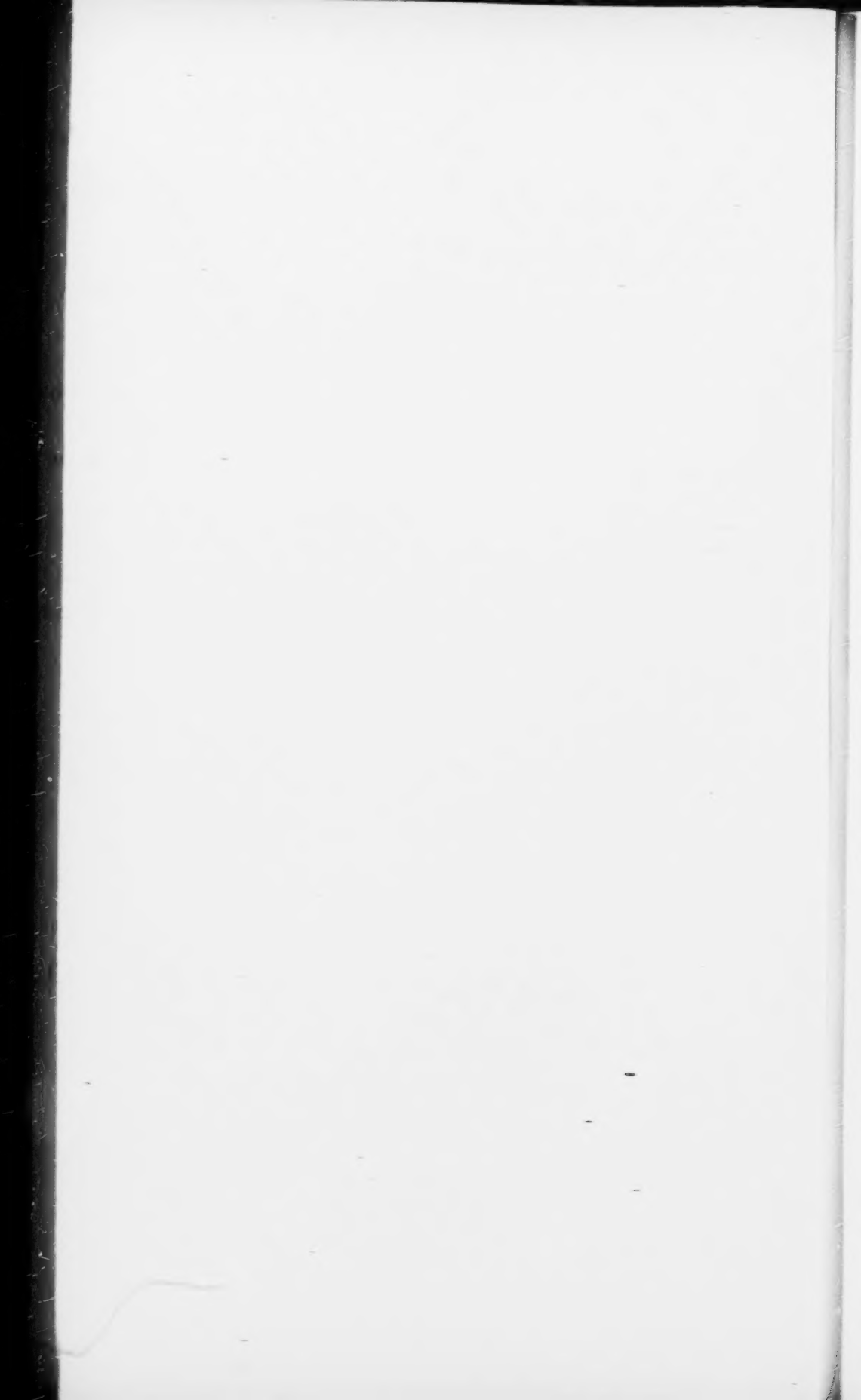
NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, it is

ADJUDGED AND DECLARED, that the above-named respondent is the father of said child.

E N T E R:

JUDITH SHEINDLIN

J.F.C.



At a Term of the Family Court
of the State of New York, City
of New York, held in and for
the County of Bronx, at 900
Sheridan Avenue, New York, on
June 3, 1983.

PRESENT:

HON. JUDITH SHEINDLIN
J.F.C.

In the matter of the Paternity
Petition of

ORDER OF SUPPORT

MOLLY MISODI,

Docket #P-6404/80

Petitioner,

- against-

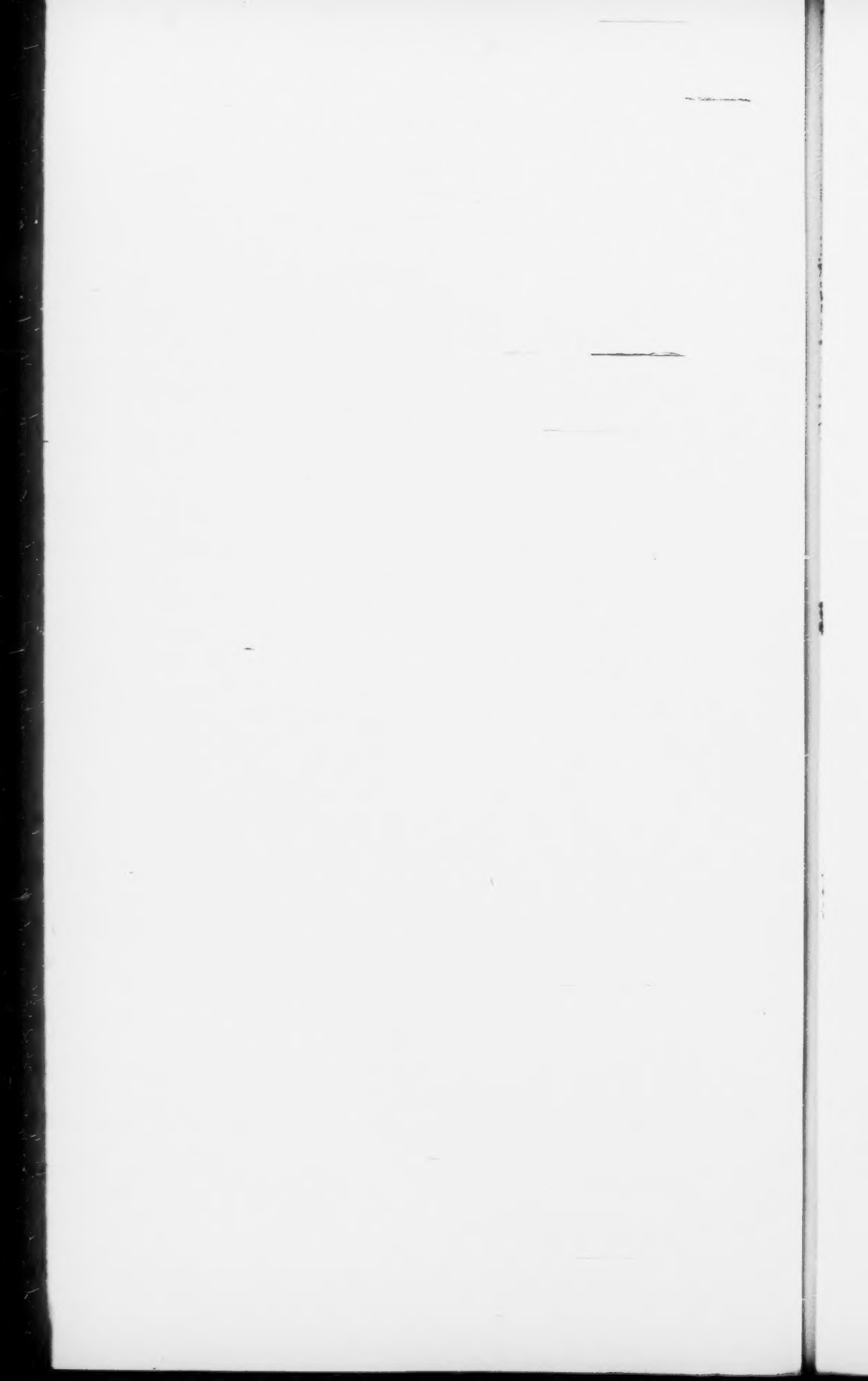
EDWIN FONDO,

Respondent.

Respondent: Your wilful failure to obey, may
after court hearing, result in your committment
to jail for a term not to exceed six months,
for contempt of court.

The above-named petitioner having filed a
petition in this Court sworn to September 21,
1980 alleging that the above-named respondent is
chargeable with the support of the dependent
named therein, and

Respondent having appeared before this Court



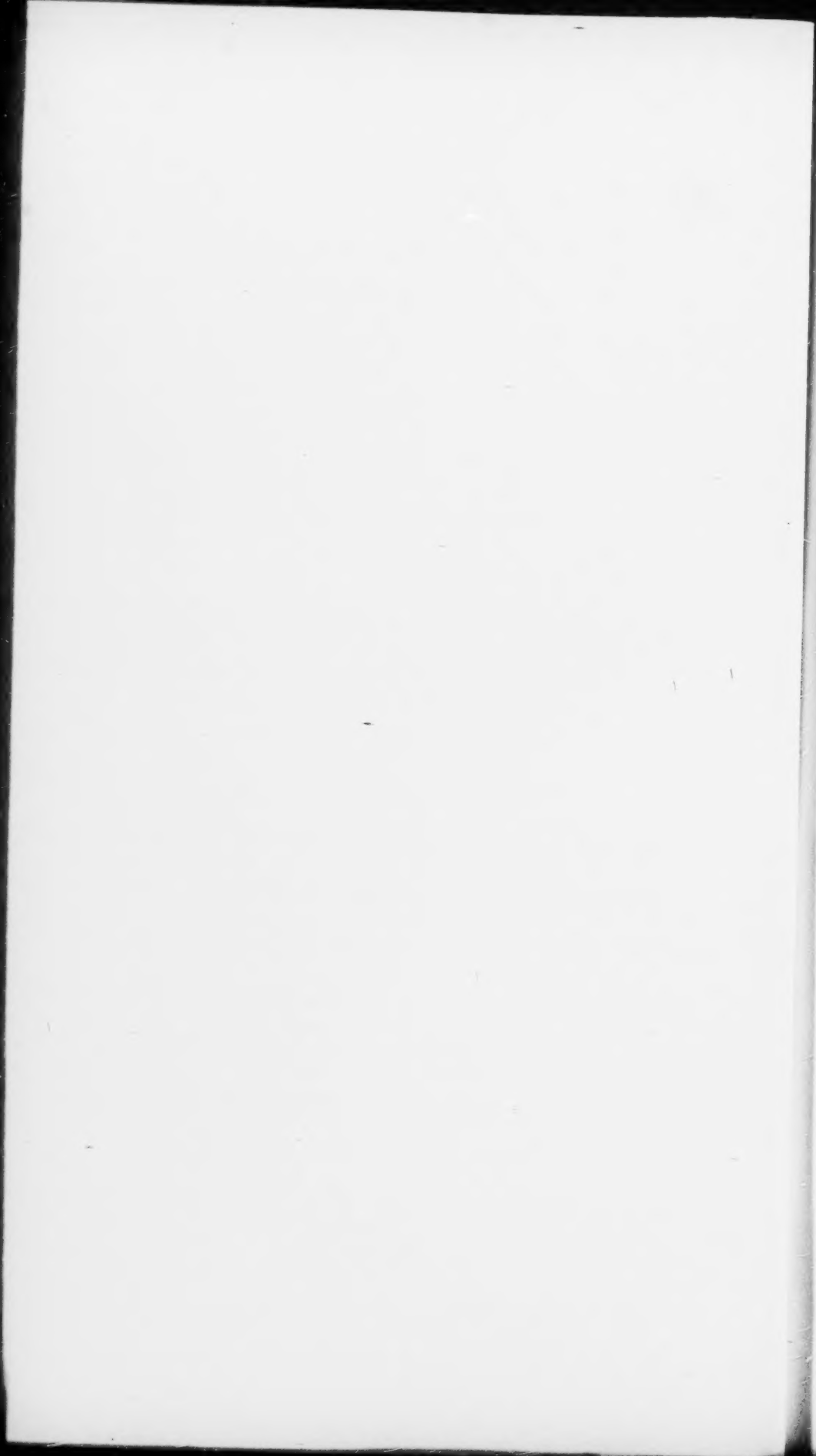
to answer the petition, having been advised by the Court of the right to counsel, and to show why an order for support and other relief prayed for in the petition should not be granted; and respondent having denied the allegations of the petition; and

The matter having come on to be heard before this Court;

NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto; it is

ORDERED AND ADJUDGED that the above-named respondent is chargeable with the support of the following person and is possessed of sufficient means and able to earn such means to provide the payment of the sum of \$100.00 per week, as follows: plus \$50.00 arrears of \$12,800.00 total \$150.00; name Edwin Young Misodi D/O/B: August 31, 1978; and it is further

ORDERED, that the above-named respondent upon notice of this order, pay or cause the



aforesaid amount to be paid to the support unit, such payments to commence on June 10, 1983, and it is further

ORDERED, that the respondent provide respondent's changes of address at all times should he move from the address last known to the Court by reporting such change to the Support Collection Unit at 900 Sheridan Avenue, Bronx, New York 10451, and respondent shall further provide arrears fixed at \$12,800.00, as of order of support of \$100.00 per week retroactive to September 1980, pursuant to Section 545 Family Court Act. Ordered support of \$100.00 per week plus \$50.00 per week toward arrears. Ordered totaling \$150.00 per week to begin June 10, 1983.

Dated: June 3, 1983

E N T E R:

JUDITH SHEINDLIN

J.F.C.